cover pecuniary damages for the death of a son twenty-seven years of age, unmarried, and who had been accustomed to make occasional presents to his parents: *Dalton* v. *South Eastern Railway Co.*, 4 C. B. N. S. 296. And it was here held, as it has often been in other cases, that the jury could not give damages by way of compensating the father for the expenses of his son's funeral or for procuring family mourning. So also *Franklin* v. *South Eastern Railway Co.*, 3 H. & N. 211; *Blake* v. *Midland Railway Co.*, 18 Q. B. 93. It was lately held in the Exchequer Chamber (*Pym* v. *Great Northern Railway Co.*, 10 Jur., N. S. 199) that where, in consequence of the death of the father, his income was by direction of his will unequally distributed among his widow and children, the eldest son taking most of it, that damages might be recovered for the benefit of the whole class on that ground, some of the children being thereby deprived of an expected support had the life of the father continued. In the very late English case of *Bonter* v. *Webster*, 13 W. R. 289, the Court of Queen's Bench adhered to the rule that no damages could be awarded to the parent by reason of the death of his child, on account of the expenses of the funeral.

I. F. R.

Court of Common Pleas of New York.

NEW YORK, ALBANY, AND BUFFALO TELEGRAPH COMPANY *v.* DE RUTTE.

Where a telegraph company receives a message addressed to a place beyond its route, and takes the compensation for the entire distance, it engages for the due delivery of the message at its destination, unless it expressly limits its responsibility to its own route, or the circumstances are such as to clearly indicate that such was the understanding of the contracting parties.

The receiver of the message is entitled to sue for his loss by the company's negligence.

The same general principles apply to the liabilities of telegraph companies as to common carriers, but not invariably nor to the same extent. Per DALY, J.

A telegraph company has a right to limit its liability by requiring a message to be repeated, but knowledge of this requirement must be brought home to the sender.

Where a person received a telegram in which there were several errors, all but one of which, however, he interpreted correctly, and that one was not apparent on its face, it is not such negligence in him not to have the message repeated, as will prevent his recovery for loss incurred in consequence of the undiscovered error.

Where a party receiving a telegram erroneously directing him to purchase wheat at 25 francs instead of 22 francs as the message should have been, purchases a quantity of wheat which he is obliged to resell at a lower price, the loss is such a direct result of the negligence as will entitle him to recover.

The Act of 1848 in regard to telegraph companies and messages, is intended as much for the protection of the companies against combinations and monopolies among themselves, as for the public. Per DALY, J.

THIS was an action brought against the appellants, defendants below, for damages for the incorrect transmission of a message sent from New York by their line to the plaintiff in San Francisco.

The facts were as follows:—

The plaintiff below was a commission merchant doing business in San Francisco, California. He had a brother, Theophilus De Rutte, who was his agent and correspondent at Bordeaux in France, but who had otherwise no interest in the plaintiff's business. T. De Rutte procured from Callarden & Labourdette, bankers in Bordeaux, an order for the plaintiff to purchase for them a cargo of wheat in California, at the extreme limit of twenty-two francs the hectolitre, which is the French official measure for grain. The plaintiff was to purchase and ship the grain to Callarden & Labourdette immediately, his commission and the mode of his reimbursement to be the same as in a previous order which he had received from another Bordeaux firm, one of the partners in which was named Monod. Upon receiving the order, Theophilus De Rutte prepared a telegram in these words: "Edward De Rutte, San Francisco, buy for Callarden & Labourdette, bankers, a shipload of five to six hundred tons white wheat, first quality, extreme limit twenty-two francs the hectolitre landed at Bordeaux, same conditions as the Monod contract, TH. DE RUTTE:" and inclosed it in a letter to Jules Lorrimer, a merchant of New York, with instructions to send it to the plaintiff in the quickest manner, and to debit the plaintiff with the charges. A clerk of Lorrimer copied the message upon a slip of paper and took it to the telegraph office of the defendant, where he gave it to a clerk to whom he paid $21.50 for its transmission to San Francisco. The defendants have printed blanks in their office upon which messages are written containing a notice, that to guard against mistakes, every message of importance ought to be repeated, for which half the price will be charged; and that they will not be responsible for mistakes or delays in the transmission of unrepeated messages from whatever cause they may arise. It did not appear that any such blanks were used in this case, nor was it shown that Lorrimer's clerk or his principal knew of the regulation.

The defendant's line extends from New York to Buffalo, where it connects with other lines, and a pony express to San Francisco.

The message was transmitted correctly by the defendant's line, and by the connecting lines to St. Louis, but when delivered to the plaintiff at San Francisco there were several errors. Th. De Rutte was changed to *Thos.* De Rutte, Monod contract to *monied* contract, hectolitre to *pretorlitiere*, and twenty-two to twenty-*five* francs.

The plaintiff was not misled as to three of the alterations. He understood the abbreviation Thos. to mean Theophilus, the words monied contract to mean Monod contract, and pretorlitiere to mean hectolitre. The words twenty-*five* francs, however, he assumed to be correct, but before acting upon the message, he tried, as he said, to get a copy of the despatch from the telegraph company at San Francisco, but they stated that they could not furnish it. Grain could be purchased in San Francisco at that time, at a price which would admit of its being landed at Bordeaux, charges included, at twenty-four to twenty-five francs the hectolitre, but not at twenty-two, and the plaintiff accordingly purchased the requisite quantity, and chartered a vessel for its shipment to Bordeaux, when he received from New York, twenty days after the despatch, the letter which his brother had written, advising him that the extreme limit was twenty-two instead of twenty-five francs. As a further assurance, on receiving this letter, he had the despatch repeated, after which he sold the wheat at the cost price, less commission, storage, and interest, and after several days' effort, he succeeded in getting rid of the charter-party by the payment of $1600 in gold, and he paid the wharfage of the vessel, and the brokerage fees upon the recharter, making in all, with the commissions, storage, and interest, the sum of $2094.51, for which the plaintiff recovered judgment.

From this judgment defendant appealed.

T. H. Rodman, for appellant.

Ed. Randolph Robinson, for appellee.

The opinion of the court was delivered by

DALY, J.—We are asked to reverse this judgment upon several grounds. The first ground taken by the defendant is, that their contract was to transmit the despatch from New York to Buffalo, and deliver it there to the connecting line, which they did. That it is made their duty by Statute Laws of New York for 1848,

page 395, § 11, to receive messages from and for other telegraph lines, and that where they transmit and deliver a message correctly to a connecting line, they are not answerable for errors occurring afterward.

The duty which the statute imposes is as much for the benefit of the telegraph companies as for the individuals who make use of them, for the business of a company, where there are several connecting lines, might be materially diminished if any of them should refuse to deliver messages to or receive them from it, and the object of this provision, therefore, was manifestly to enable new companies to compete with established lines, thus preventing the evils of monopolies, and of combinations among companies. But while the statute makes it the duty of a telegraph company to receive and transmit such messages, it does not make it in such a case the collecting agent of the other lines. It imposes no higher duty than the words express, and leaves each company at liberty to require the payment of its own charges before it either delivers or transmits a message. Where a message is to be transmitted through many connecting lines, it is a matter of convenience to be enabled to pay the entire charge, either at the place from which it is sent, or at the place where it is received; and it is the interest of companies, especially where there are competing lines, to make arrangements whereby upon the payment to them of the whole charge, a message may be sent the entire length of telegraphic communication. It is to be assumed that this is the case, when a telegraphic company was paid for the transmission of a message to a place beyond their own lines, with which they are in communication by the agency of other companies, and they must in such a case be regarded as undertaking that the message will be transmitted and delivered at that place.

The same rule must be applied to them that is applied to a common carrier, who receives the whole compensation for the carriage of a package addressed to a place beyond the limits of his own route; that is, that he engages for the due delivery of the package at the place of destination, unless he expressly limits his responsibility to his own route, or the circumstances are such as to clearly indicate that that was the understanding of the contracting parties: *Weed* v. *The Schenectady and Saratoga Railroad*, 19 Wend. 534; *Muschamp* v. *The Lancaster and Preston Railway Co.*, 8 M. & W. 421; *St. John* v. *Van Santvoord*, 25 Wend.

660; Id., 6 Hill 157, in error; *Wilcox* v. *Parmlee*, 3 Sandf. S. C. Rep. 610. By taking pay in advance for the whole distance, he holds himself out as a carrier for the entire distance, per WALWORTH, C., in *Van Santvoord* v. *St. John*, *supra*, where a railroad that terminated in Boston took a wagon at Troy, that was to be carried to Burlington. Hence, it is said, "It was no part of the plaintiff's business to inquire how many different corporations made up the entire line of road between Troy and Burlington, or having ascertained it, to determine at his peril which of such corporations had been guilty of the negligence:" *Foy* v. *The Troy and Boston Railroad Co.*, 24 Barb. 382, and Lord ABINGER in *Muschamp* v. *The Lancaster, &c., Railway*, *supra*, remarked, that it was useful and reasonable for the benefit of the public in such a case, that it should be considered that the undertaking was to carry the parcel the whole way. "It is better," he said, "that those who undertake the carriage of parcels for their mutual benefit should arrange matters of this kind *inter se*, and should be taken each to have made the others their agents;" all of which remarks are as applicable to the transmission of a message as to the carriage of a parcel. In this case Lecour told the defendant's clerk to send the message to California, and asked him what would be the charge of sending it to San Francisco, to which the clerk answered $21.50, which Lecour paid, and this *primâ facie* was sufficient to show that the defendants engaged to send it to San Francisco. Whatever contract was made was made with them, and not with any other company. There was nothing said, nor was there anything to indicate that they were to be answerable only for its correct transmission along their own line. They received the whole amount that was asked to send it to San Francisco, without communicating by what lines it would be sent, or any other particulars as to the mode or manner of its transmission. They took upon themselves the whole charge of sending it, and what arrangements were made, or what sum would be paid for the use of the lines in connection with them, were matters not disclosed to the party interested in the transmission of the message, and with which consequently he had nothing to do. He made his contract with them, and if injured by its non-fulfilment, he has a right to look to them for compensation for the injury sustained.

The next objection taken by the defendants is, that they entered into no contract with the plaintiff; that they made their contract with

Th. De Rutte, who sent the message, acting as the agent of Callardan & Labourdette. It does not necessarily follow that the contract is made with the person by whom, or in whose name, a message is sent. He may have no interest in the subject-matter of the message, but the party to whom it is addressed may be the only one interested in its correct or diligent transmission, and where that is the case he is the one in reality with whom the contract is made. The business of transmitting messages by means of the electric telegraph is like that of common carriers in the nature of a public employment, for those who engage in it do not undertake to transmit messages only for particular persons, but for the public generally. They hold out to the public that they are ready and willing to transmit intelligence for any one upon the payment of their charges, and when paid for sending it, it forms no part of their business to inquire who is interested in, or who is to be benefited by the intelligence conveyed. That becomes material only where there has been a delay or a mistake in the transmission of a message which has been productive of injury or damage to the person by whom or for whom they were employed, and to that person they are responsible, whether he was the one who sent, or the one who was to receive the message. It is somewhat analogous to the question which arises, when goods are lost upon their carriage, whether the action against the carrier is to be brought by the consignor or the consignee, and the general rule upon the subject is that the one in whom the legal right to the property is vested, is the one to bring the action, and if that is the consignee, the consignor, in making the contract with the carrier, is regarded as having acted as the agent of the other: *Danes v. Peck*, 8 T. R. 330; *Griffith* v. *Ingledew*, 6 Serg. Rawle 429; *Freeman* v. *Birch*, 1 Nev. & Man. 420; *Dutton* v. *Solomson*, 3 Bos. & Pull. 584; *Everett* v. *Salters*, 15 Wend. 474. In the case now before us it could make no difference to Callardan & Labourdette whether the message was correctly transmitted or not, as wheat could not be purchased at the time in San Francisco at the price which they had fixed, and the plaintiff was the only one who could be and who was affected injuriously by the mistake in the message. The error made led him into the purchase of over $17,000 worth of wheat, upon which he expected, upon the assumption that the despatch was correct, to make his ordinary commissions, and the purchase proving unavailable when the mis-

take was discovered, he was subjected to an actual loss of more than two thousand dollars.

Th. De Rutte may, for certain purposes, be regarded as the agent of Callardan & Labourdette in giving the order, but he was more especially the agent of the plaintiff in procuring it for him, and it is a decisive circumstance to show that he was acting for the plaintiff, and that the despatch was sent upon his account and for his benefit that Lorrimer, the correspondent in New York, was instructed by Theophilus De Rutte to charge the plaintiff with the expense of transmitting it. It was an order given to a commission merchant to purchase grain for a foreign house, if it could be bought at a certain price. In that event he had an interest to the extent of his commissions, and that he might have the earliest intelligence of it, and secure, if possible, any advantage to be derived from it, it was by the direction of his agent and corre spondent at Bordeaux, and at his (the plaintiff's) expense, sent by telegraph from New York to San Francisco. When the defendants, therefore, undertook and were paid for sending the messages, their contract was with the plaintiff, through his agents, and the action for the breach of it was properly brought by him: *Dryburg* v. *The New York and Washington Telegraph Company*, 35 Penn. R. 297; *Eyre* v. *Higbee*, 15 How. 46.

But if we were to leave out of view altogether the question with whom the contract was made, the defendants would still be liable to the plaintiff for putting him to loss and damage through their negligence in transmitting to him an erroneous message, and as they were the company to whom the whole compensation for its transmission was paid, they would be liable in an action for negligence, though the error or mistake was made by one of the companies through whom they transmitted it. It has been frequently held that the owner of a vessel is liable for a collision resulting from negligence, though his vessel at the time was under the control of a pilot acting under an independent commission from the state, the reason given for which is, that it is more convenient and more conformable to the general spirit of the law, that the owner, who has had the benefit of the voyage, should seek his remedy against the pilot than that the injured party should be turned over to an action against the pilot: *Yates* v. *Brown*, 8 Pick. 23; 16 Martin's La., 4 Dall. 206; *Fletcher* v. *Broderip*, 5 B. & P. 182. And I think it may be said with equal force where a merchant in

San Francisco receives a telegraphic message from New York which leads him into a purchase involving inevitable pecuniary loss, which would not have occurred but for an error made in the transmission of the message, that he should not be compelled to seek, through a chain of telegraphic communication extending over nearly the whole length and breadth of the United States, to ascertain where the error or mistake was made, but that it is more equitable and just to hold that the telegraph company to whom the message was originally given, and to whom the whole compensation for its transmission was paid, should be answerable to him for the negligence, and that, having peculiar facilities, the obligation should be upon them to ascertain when, where, and how the error occurred, leaving them to fix the ultimate responsibility upon those to whom it belongs. "Where a trust," said Lord HOLT, "is put in one person, and another whose interest is intrusted to him is damnified by the neglect of such as that person employs in the discharge of that trust, he shall answer for it to the party damnified: *Lane* v. *Cotton*, 12 Mod. 490. A trust was reposed in the defendants that they would send the message as it was delivered to them. They determined by what companies it should be sent beyond their line, and as the result has shown, the plaintiff had an interest in its correct transmission, which is sufficient to bring the case within this rule which Lord HOLT laid down in an action on the case for negligence, and which, though expressed in a dissenting opinion, has been uniformly regarded as sound law.

The next question that arises is as to the nature and exact extent of the responsibility which the law should impose upon those who engage in the public business of transmitting intelligence from one place to another by means of the electric telegraph, whether considered with reference to their liability upon contract, or for injuries brought about by their negligence. The law upon this subject is as yet undefined, for the business is of recent origin, and the cases which have arisen are comparatively few. I have already pointed out one distinguishing feature that, though pursued for reward, it is designed for the general convenience of the public. Like the business of common carriers, the interests of the public are so largely incorporated with it that it differs from ordinary bailments, which parties are at liberty to enter into or not, as they please. In this state it is made the duty of tele-

graph companies by statute to transmit despatches from and for any individuals with impartiality and good faith upon the payment of their usual charges (Laws of New York, 1848, p. 395), a duty which would arise from the nature of their business, even if there were no statute upon the subject. Common carriers are held to the responsibility of insurers for the safe delivery of the property intrusted to their care, upon grounds of public policy, to prevent frauds or collusion with them, and because the owner, having surrendered up the possession of his property, is generally unable to show how it was lost or injured: *Riley* v. *Home*, 5 Bing. 217; *Thomas* v. *The Boston and Providence Railroad Corporation*, 10 Met. (Mass.) 476; *Coggs* v. *Bernard*, 1 Ld. Ray. 909 and App. These reasons, which are the ones usually assigned for the extraordinary responsibility of common carriers, cannot be regarded as applicable to the same extent to telegraph companies, nor are there any reasons, in my judgment, why they should be held to the extent of the responsibility of insurers for the correct transmission and delivery of intelligence. As their business, however, is one which leads to their being intrusted with confidential and valuable information, especially in commercial matters, there are opportunities for frauds and abuses, which, in view of the relation that they occupy to the public, makes it necessary upon grounds of public policy that they should be held to a more strict accountability than ordinary bailees. As the value of their service consists in the message intrusted to them being correctly and diligently transmitted, it must be taken for granted that they engage to do so, and if there is an unreasonable delay or an error committed, it should be presumed that it has arisen from their negligence, unless they can show that it occurred from causes beyond their control. It is particularly suggested by the counsel of the defendants that the telegraph is not at all times subject to the will of the operator. That although the machinery and apparatus are in complete order, yet at times a message cannot be sent because of supervening influences which at some point on the line, unknown to the operator, destroy the affinity or other active qualities of the current as it passes along the wire. The delicate touch of the battery may start the fluid which, by its passage, is to transmit the agreed sign, but before it reaches its destination a surcharged atmosphere, hundreds of miles away from the operator, may utterly destroy or materially vary the tractability of the

conductor. The fluid must thus be diffused or varied in its practical operation, without the power of man to foresee or to prevent it. Those who avail themselves of the advantage of the telegraph, can expect nothing more than it is in the power of this novel and useful invention to afford. Causes like this, or any cause equally satisfactory, would absolve a telegraph company from all responsibility for errors or delays. It is inevitable, moreover, that mistakes should be committed even by the most skilful persons in the interpreting, transmitting, and the transcribing of words, and where the liability to do so is manifest, and the risk incurred is great, it is reasonable that telegraph companies should have the right to require as a test for their own security against loss, that a message should be repeated. Their compensation is small in proportion to the risks they incur, and they have the right to qualify their liability by a special contract that they will not be answerable unless that condition is complied with. Like common carriers, they may limit their liability by a special acceptance when the message is delivered to them, but which must be brought home to the knowledge of those who employ them, who might otherwise be ignorant of the fact that a repetition of the message was necessary to insure its accurate transmission. It may be that in the course of time this practice will become so universally established among telegraph companies, that all doing business with them will be presumed to have a knowledge of it, and that the omission to secure a repetition of a message will be at the risk and peril of the party for whom it is sent.

That is not the case at present, and as there was nothing on the trial of this action to show that the clerk who delivered the message, or any one interested in it, knew of the establishment of such a regulation by the defendants, the ground of defence is not available to them.

The next ground taken is, that the plaintiff was himself at fault, in not having the message repeated, after he had ascertained that there were three errors in it. That it was co-operating negligence on his part to act upon such a message, which deprives him of all right of action. He went to the officer in San Francisco to ascertain exactly what despatch they had received, but they could not find it, and I think that the errors he had discovered were not of a character which should have led him to doubt if the words twenty-five were correct. The change from Th. to Thos. was a

very natural one. The mistake in a French word was one that might ordinarily occur, and the transformation of Monod, to the operator an unmeaning word, into monied, was one of those slips or mistakes which might readily be made. That they were so is apparent in the fact that he at once discovered them, and I think that it does not follow because he discovered mistakes like these that he was bound to regard the whole message as unreliable, and have it repeated at an expense of some fifty dollars. The words twenty-five were intelligible and plain. They expressed the very price at which wheat was then ranging in San Francisco, and it was very natural for him to suppose that they had been transmitted correctly. To hold that he was guilty of negligence because he assumed that the message was correct in this particular, would be to declare that no man must act upon one in which he discovers a few trivial mistakes, but which is otherwise perfectly intelligible, except at his peril. I do not profess to have much information upon the subject, but I apprehend that it is a matter of common and every-day experience for messages to be received with words misspelt or otherwise altered, without affecting their general sense, but with which they are perfectly intelligible, which the party receiving would have to disregard or get repeated to be made secure in acting upon them, if the courts were to recognise such a rule as the defendants insist upon.

The last question in this case relates to the measure of damages. The defendants claim that the loss which the plaintiffs sustained in consequence of this erroneous message, was not one that can be regarded as fairly within the contemplation of the parties, or such as would naturally be expected to flow from the mistake that was made.

I dissented from the judgment of my brethren in *Bryant* v. *The American Telegraph Co.*, decided at the General Term 1866, in which they held a telegraph company responsible to the amount of $10,000 for a delay in the delivery of a telegraphic despatch, by which the plaintiff lost the opportunity of securing a debt of that amount by an attachment upon property of the value, belonging to his debtor; and so far as this court is concerned, that case is decisive of the point now presented. But this is a much stronger case than that. The order, erroneously transmitted by the defendant's instrumentality to the plaintiff, was the direct cause of his purchasing the wheat at the price which he did, and

of the outlay he made for its shipment, and the inevitable loss which resulted from his acting upon the supposed order, was the natural and necessary consequence of that purchase. The familiar rule in respect to damages, is that they must be such as flow directly and naturally from the non-fulfilment of the contract; that they must not be the remote, but the proximate consequences of the breach; that they must be certain, and not speculative or contingent; and where the right of action is founded solely upon the ground of negligence, irrespective of any questions of contract, that they must be the direct and immediate consequence of the negligence committed, and this case comes fully within this rule.

The judgment should be affirmed.

Of the several points presented in the foregoing opinion, we shall notice two, as bearing more directly upon the law of telegraphs and treating the subject in a clear and forcible manner.

I. As to the nature and extent of the responsibility which the law should impose upon those who engage in the business of transmitting intelligence for the public by means of the electric telegraph.

There have been so few decisions upon this subject, and the law on the cases which have arisen, is as yet so meagre, that it is incapable of being predicated with any certainty, and in fact is only reached at all by analogy. The nature of the business differs essentially in many particulars from that of the common carrier, and although the same general rules are said to be applicable to both, they must undergo considerable modification or they fail to render impartial justice. In *Parks* v. *The Alta Cal. Co.*, 13 Cal. 422, BALDWIN, J., says: "The rules of law which govern the liabilities of telegraph companies are not new. They are old rules applied to new circumstances. There is no difference in the general nature of the legal obligation of the contract between carrying a message along a wire and carrying goods or a package along a route. In both cases the responsibility of the parties for breach of duties is governed by the same general rules." One of the principal reasons why telegraph companies should be held to the same responsibility attaching to other common carriers is because the public are greatly concerned in having those intrusted with duties so vitally affecting the commercial interests of a country, held to a strict accountability—and this, so far from pressing with undue severity on them and tending to restrain their formation, would undoubtedly result to their advantage, as everything which tends to lessen their responsibility weakens their position with the public, and serves to render them less frequently the means of communication for commercial transactions requiring the highest possible degree of responsibility.

It was urged, however, in the above case, and with some apparent justice, that notwithstanding all the care and attention that a company may bestow in the selection of its operators, and their undoubted competency for the position, still the telegraph is subject to influences entirely beyond their control, and not within the power of human foresight to guard against; and, therefore, telegraph companies should not be held to the same accountability as ordinary common carriers. The argument, however, fails of

force because this is the case with every carrier for hire. There are certain accidents against which he cannot guard and for which he is not, on that account, held responsible; and although, with regard to ordinary carriers, these exceptional cases may be said to be certain, and the public to know exactly what risks it must bear, still it is only because the law is definitely settled by the number of decisions upon the subject and the great length of time common carriers have been known to the law.

Would it not be better likewise, to hold telegraph companies strictly liable to the same accountability, and allow them in cases where they have failed to perform their contract, to show that it was the result of an unavoidable accident and beyond their power to prevent? In a comparatively short time the cases in which they would be held unaccountable would be as well determined as in the case of other carriers, and the reliance of the public upon their responsibility equally unimpaired.

II. As to how far the original or contracting company, where there are several connecting lines, should be held accountable for mistakes occurring on such lines, they not belonging to it nor under its control. The opinions seem to have been conflicting at different times and in different countries. The cases have not arisen in reference to telegraph companies which are of such recent date, but of ordinary common carriers, and here the same rules are undoubtedly applicable to both species of carriers, making allowance for the different causes which in either case would absolve the original company from liability.

In a case decided in England in 1841, *Muschamp* v. *The Lancaster and Preston Railway Co.*, 8 M. & W. 421, the plaintiff, a stone-mason, ordered a box of tools to be sent from Lancaster, a town on the line of the defendants' railway, to Wheatsheaf, on a connecting road. The clerk at the station said the carriage money had better be paid on delivery. The box arrived safely at Preston, the terminus of the defendants' road, but was afterwards lost, and the question was whether the defendants were liable. The Court of Exchequer held that they were. ABINGER, C. B., delivering the opinion, says, "the question is whether the following is a correct charge to a jury: Where a common carrier takes into his care a parcel directed to a particular place, and does not by *express agreement* limit his responsibility to part only of the distance, it is *primâ facie* evidence of an undertaking on his part to carry the parcel to where it is directed, although the place is beyond the limits within which he professes to carry on his business,"—*held*, that it was. He goes on to say "that the carriage-money being one undivided sum, supports the inference that although the carriers convey the parcel only a part of the distance in their own vehicles, they make subordinate contracts with other carriers and are partners *inter se* as to the carriage-money, though particular circumstances in some cases may rebut the inference which *primâ facie* must be made that defendants undertook to carry the parcel the entire distance." This case goes the full length of making the original company liable for losses occurring on connecting lines or roads, and was fully sustained in *Scothorn* v. *The South Staffordshire Railway Co.*, 8 Exch. 341, where ALDERSON, B., says "there is no doubt the defendants agreed to carry the plaintiff's goods the *whole distance* for a certain reward, and there is also no doubt they are liable for their loss through negligence during any part of the journey." The goods in this case were lost on a connecting road, after reaching the terminus of the defendants' in safety.

In both the foregoing cases the freight

was paid in one entire sum, but in *Watson* v. *The Ambergate and Boston Railway Co.*, 3 Eng. L. & E. 497, the carriage-money was only paid as far as the terminus of the defendants' road, and the rest was to be collected on delivery, yet this was held to make no difference in the rule, the contract being to carry the entire distance: Judge PATTESON saying, "the defendants not having taken the entire carriage-money is immaterial, and may be explained by their not knowing the amount."

In *Mytton* v. *Midland Railway Co.*, 4 H. & N. 614, it was held that the plaintiff could not recover damages from a *connecting railway* for a loss occurring on such connecting line, on the ground that there was one contract for an entire sum with the original company, and no contract with any of the connecting companies. To the same point are *Coxon* v. *Great Western Railway Co.*, 5 H. & N. 274, and *Blake* v. *The Same*, 7 Id. 986.

The case of *Collins* v. *The Bristol and Exeter Railway Co.*, 11 Exch. 790, may be said to have definitely settled the question in England as to the liability of the original company for all losses on connecting roads. The plaintiff, Collins, paid a certain sum to a railway company to carry goods to a place beyond the terminus of their road. In the receipt the contracting company expressly stipulated that they would not hold themselves liable for loss by fire. The goods were subsequently burnt while on a connecting road, and in a suit for damages against the connecting company, the doctrine above laid down, that the original company is the *only* contracting party, and that it is *alone* responsible for losses, was pushed to the extent of holding that the *express stipulation* of the original carrier would protect all connecting companies, although the case was one in which a common carrier was undoubtedly liable, and nothing but an express agreement could relieve him. This case was reversed in the Exchequer Chamber (1 H. & N. 516), but was sustained in the House of Lords and the judgment of the Exchequer upheld (5 H. & N. 969), the Lord Chancellor, CHELMSFORD, saying that the case was governed by *Muschamp* v. *Lancaster Railway*.

There seems to be some conflict among the decisions in the different states in this country, very few going quite the extent of the English rule, though the majority are strongly inclined that way.

In New York, in *Weed* v. *The Saratoga and Schenectady Railroad Co.*, 19 Wend. 534, the plaintiff contracted with the defendants, for the latter to convey a trunk from Saratoga to Albany, a place beyond the terminus of their route, and paid the through fare. It was held, Judge COWEN delivering the opinion of the court, that the defendants were liable without proof of the loss occurring on their road. "The defendants having undertaken to carry from Saratoga to Albany, cannot be received to say they are carriers no further than Schenectady, the terminus of their route; they are estopped to deny that they are carriers for a distance commensurate with what they engage for." This case comes fully up to the English rule laid down in *Muschamp* v. *Lancaster Railway*, cited *supra*. See also *Fairchild* v. *Slocum*, 19 Wend. 329, and *Hart* v. *Rensselaer Railroad Co.*, 4 Seld. 37. But in *St. John* v. *Van Santvoord et al.*, 25 Wend. 660, the facts were these. The plaintiff, St. John, without *any contract*, put on board defendants' boat plying between New York and Albany, a box directed "*J. Petrie, Little Falls, Herkimer Co.*," and took a receipt in that form. On the arrival of the boat at Albany, the box was placed on board of a canal-boat going to Utica, the freight to Albany being paid by the master of the canal-boat; the box was lost after leaving

Albany. It was proved on the trial that it was the custom of all boats plying on the Hudson, when they took packages from New York, directed to places west or north of Albany, to intrust them to canal-boats at Albany, to be carried to such places. Knowledge of the custom, and that the defendants' line terminated at Albany, was not brought home to the plaintiff. The Supreme Court, reversing the court below, NELSON, J., delivering the opinion, says, "the court erred in charging that custom and the usage of trade determined the rights of the parties where there was no evidence of a contract, express or implied, to carry the goods beyond Albany. Such a contract is fairly to be inferred from the receipt. The direction indicated to whom the plaintiff wished to send the box, and the defendants receiving it without any qualification and receipting for it, is, in effect, saying we will deliver it according to the direction, and so the plaintiff must undoubtedly have understood the contract." This is a just and reasonable view of the transaction, and it seems but equitable that a carrier who does not limit his responsibility, at the time of receiving a package addressed to a place beyond the terminus of his route, and who fails to notify the sender that he would only carry it a certain distance, thereby misleading him, should be held liable in case of loss; this is also in accordance with the previous decisions in this country and England.

And yet this case was reversed in the Court of Errors and Appeals, 6 Hill 157. Chancellor WALWORTH, placing the duty of notifying on the sender of the goods.—"If the owner of goods neglects to make the necessary inquiries as to the custom or usage of the carrier, or to give directions for their disposal, it is his fault, and the loss, if any, after the carrier has performed his duty according to the ordinary course of his business, must fall on the owner."

In commenting on this case in *Quimby* v. *Vanderbilt*, 3 Smith 306, DENIO, J., says, "the English rule, in my opinion, was very wisely limited in *Hart* v. *Rensselaer Railroad*, by holding that evidence was admissible to show that by the course of trade a transportation company receiving property without any *special contract*, only undertook to carry it over its own road."

In *Wilcox* v. *Parmelee*, however, 3 Sand. Ch. 610, it is expressly asserted that where the carrier *agrees* to carry the goods to a place beyond the terminus of his route, and receives compensation therefor, he is liable for a loss on a connecting road, and that the evidence of such an agreement is the giving of a receipt for such place and the collection of the freight. All doubt, however, in such a conflict of authority, was set at rest by the enactment of a statute to meet the point, at least as far as railroads are concerned, 2 R. S. § 67, 693. The language is, "whenever two or more railroads are connected together, any company owning either road and receiving freight to be transported to a place on the line of the other, *shall be liable as common carriers*, for the delivery of such freight at such place." See the last case on this subject, *Smith* v. *New York Central Railroad Co.*, 43 Barb. 225.

In Pennsylvania the rule was laid down by Judge STROUD, in the District Court of Philadelphia, *Jenneson* v. *Camden and Amboy Railroad Co.*, 4 Am. Law Reg. 234. Jenneson delivered a chest to the defendants at Burlington, N. J., to be carried to Camden, Ohio, and took a receipt in the following form: "Received from M. Jenneson, a chest marked as per margin, which we promise to deliver at our office in New York upon payment of freight." On the margin was written, "To be shipped for Camden, Ohio, from New York." The plaintiff offered to pay the freight, but defendants said it might be settled for at the end of

the line. The chest was lost, and in an action for damages, the plaintiff having declared on a contract to carry the chest from Burlington to Camden, and offering the receipt in evidence of the contract, was nonsuited on the ground of the probata and allegata not agreeing. STROUD, J., sustained the nonsuit, and in his opinion was evidently inclined to the doctrine that in the absence of a *special contract*, a carrier receiving goods directed to a place beyond the terminus of his route, would not be liable for their loss on a connecting line, and cited with marked approbation *Van Santvoord* v. *St. John*, and *Nutting* v. *Connecticut River Railroad Co.*, 1 Gray 502. In the latter case, where goods were shipped by the plaintiff from Northampton in Massachusetts to New York, over the defendants' road, which only extended part of the distance, the freight being paid *only to the terminus of the defendants' road*, in a suit for the value of the goods, which were lost on a connecting road, it is laid down by METCALFE, J., as law, "that where common carriers receive goods destined to a place beyond the terminus of their route, and take pay *only* for transportation over their own road, their obligation is simply to transport them safely to the end of their route; for if they can be held liable for a loss happening on any road but their own, we know not what would be the limit of their responsibility." He also expresses his disapproval of the doctrine of *Muschamp* v. *Lancaster Railway Co.*, *supra*.

If the learned judge only meant to say that it was capable for a common carrier receiving goods, directed to a place beyond the terminus of his route, to limit his responsibility to such route by *special agreement*, he was undoubtedly correct in the assertion, and even the English cases recognise this; but if he meant to decide that where goods are received without *any* agreement expressed, and are directed to a place beyond the terminus of a carrier's route, he is *not* liable on an *implied* agreement, evidenced from his receipt of the goods knowing them to be destined to a place beyond his road, it is the very question at issue, and the form in which it usually arises.

In *The Fitchburg & Worcester Railroad Co.* v. *Hanna*, 6 Gray 539, it was held that where several connecting railroads affirmed that they were *jointly* entitled to freight earned by bringing suit in the name of a common agent, they would be responsible for a loss, on whatever part of the line it happened, on a contract by their agent. But in *Briggs* v. *Boston & Lowell Railroad Co.*, 6 Allen 216, the court affirmed the former opinion, that a carrier was only liable as a forwarder for goods to be transported beyond the terminus of his route, after they had reached said terminus.

The rule is the same in Connecticut as in Massachusetts, that in the absence of a *special contract*, a carrier will not be liable beyond the terminus of his route, and the giving of a receipt for the whole distance, and receiving the full amount of carriage-money, will not be considered evidence of such special contract: *Hood* v. *New York & New Haven Railroad*, 22 Conn. 1; *Elsmore* v. *The Naugatuck Railroad*, 23 Conn. 457. In the last case, ELLSWORTH, J., delivering the opinion of the court, says, "We cannot think that a railroad company, simply receiving goods directed to a place beyond the terminus of their road, enter into an *implied agreement* to deliver them at such place, and we agree with the courts of Massachusetts in their dissent from the English rule of *Muschamp* v. *Lancaster Railway*."

It was intimated by Chief Justice REDFIELD, in *Sprague* v. *Smith*, that the rule as to the liability of a common

carrier, for a loss occurring on a connecting line, was different in regard to passengers and freight, and that there was no liability for the former beyond the end of the original carrier's road: 29 Vt. 421. However, in *Buntnall* v. *The Saratoga Railroad*, 32 Vt. 665, this distinction, if it existed, was not alluded to, and the broad rule was maintained that carriers were not liable for goods lost while on a connecting line. See *Quimit* v. *Henshaw*, 35 Vt. 605.

Judge DAVIS, in *Perkins* v. *Portland & Saco Railroad Co.*, 47 Me. 573, after holding that the law in this country is different from what it is in England, says, "Although without a *special contract* a carrier is not liable for a loss on a connecting line, still we think he may be bound if, by his agent, he holds himself out to the public as a common carrier to a place beyond the limits of his route; and where the agent has no express authority to make such a contract, it may be implied from a mutual arrangement for the carrying business amongst all the carriers between where the goods are received and the place of delivery." In the case in point a receipt for the whole distance was given, but no freight advanced, nor any sum agreed upon.

In *Angle & Co.* v. *The Mississippi Railroad*, 9 Iowa 487, merchandise was delivered to the defendants at Muscatine, marked "Cedar Rapids, Iowa," freight to be collected on delivery: the defendants' road only went to Iowa City, twenty-five miles from Cedar Rapids, and the rest of the distance had to be made in wagons. WOODWARD, J., says, "We are clearly of the opinion that where goods are delivered to a railroad company marked to a place beyond their road, and unaccompanied by any direction but the mark, the company is bound to deliver according to the mark, although parol evidence is admissible to vary the contract, as it is only *primâ facie* evidence from the receipt that they undertook to carry the whole distance, and the company would be exempt if an unvarying usage to deliver at the terminus of their road was proved, and knowledge of such usage brought home to the consignor."

The rule that the original carrier is liable for losses occurring beyond the terminus of his route, is the law in South Carolina (*Kyle* v. *The Laurens Railroad Co.*, 10 Richd. 382) and also in Tennessee: *Carter* v. *Peck*, 4 Sneed 203.

From the foregoing it will appear that the rule in England is undoubted to hold the contracting carrier liable for all losses occurring on any road with which he connects, and in this country that however it may vary in the different states, the current of opinion is decidedly in favor of the English rule. W. W. W.